

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION III

CA06-856

February 28, 2007

CV'S FAMILY FOODS &
BENCHMARK INSURANCE
COMPANY

APPELLANTS

V.

GLORIA TAYLOR

APPELLEE

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [F202289]

AFFIRMED

The sole issue in this workers' compensation case is whether there is substantial evidence to support the Commission's finding that appellants are subject to a twenty-percent penalty for failure to timely pay two separate periods of temporary-total disability benefits to appellee authorized by previous awards of the Commission. We affirm.

On November 7, 1998, appellee, Gloria Taylor, suffered an injury while working for appellant CV's Family Foods; appellants accepted Taylor's neck and right-shoulder injuries as compensable and controverted her claims of a low-back injury on that date. It was ultimately determined by the Commission that Taylor had not suffered a compensable low-back injury.

While the above-mentioned claim was pending, Taylor filed a new claim, contending that she had suffered a new low-back and cervical-spine injury on January 27, 2002. In an opinion dated March 27, 2003, the Administrative Law Judge determined that Taylor had failed to prove that she had suffered a compensable cervical-spine injury as the result of a specific employment-related incident on January 27, 2002. However, the ALJ determined that Taylor had sustained a compensable injury to her lumbar spine on January 27, 2002, and that the medical services provided and recommended by Dr. Harold Chakales for her lumbar spine were reasonably necessary medical services for that injury. The ALJ further determined that as a result of her compensable lumbar-spine injury, Taylor was temporarily totally disabled for a period beginning February 18, 2002, and continuing through a date yet to be determined. This decision was affirmed and adopted by the Commission. Appellants appealed to this court, which affirmed the decision of the Commission on November 17, 2004. There was no petition for rehearing or petition for review filed in this case, and the decision became final when the mandate was issued eighteen days after the opinion from this court was handed down. *See* Ark. S. Ct. R. 2-3, 2-4, and 5-3.

After the November 17, 2004 decision from this court, Taylor filed a claim seeking penalties against appellants under Arkansas Code Annotated section 11-9-802; requesting that appellants be held in contempt pursuant to Arkansas Code Annotated section 11-9-706; requesting a determination as to whether she was entitled to additional temporary-total-disability benefits from March 26, 2005, through a date yet to be determined and

whether appellants were subject to the penalty provisions of Arkansas Code Annotated section 11-9-802 on those temporary-total-disability benefits; and asking for a determination as to her entitlement to surgery previously recommended by Dr. Chakales.

The ALJ determined that Taylor's entitlement to medical services for her compensable lumbar injury was resolved in her favor in a previous opinion and therefore that issue was *res judicata*; that appellants had willfully and intentionally failed to pay for the surgical treatment of Taylor's compensable lumbar injury and were therefore liable for the maximum penalty of thirty-six percent pursuant to Arkansas Code Annotated section 11-9-802(e); that appellants had failed to pay within fifteen days after it became due the installments of temporary-total disability payable under the prior opinion of March 27, 2003, that had accrued by the date of the Court of Appeals mandate on December 7, 2004, and were therefore subject to the twenty-percent penalty provided in Arkansas Code Annotated section 11-9-802(c); that Taylor continued in her healing period from her compensable lumbar injury and continued to be totally disabled as a result of that injury from March 25, 2005, through a date yet to be determined; that this compensation was payable under the prior March 27, 2003 opinion and that any of these installments that have not been paid within fifteen days after they became due were subject to the twenty-percent penalty provided for in Arkansas Code Annotated section 11-9-802(c); that appellants were not in contempt; that appellants controverted any claim for benefits in its entirety; and that appellants were liable for the maximum statutory attorney's fee on all of the controverted penalties.

Appellants appealed the ALJ's decision to the Commission, which affirmed in part and reversed in part. The Commission affirmed the ALJ's findings and awards with regard to the twenty-percent penalties associated with the two instances of late payment and the failure to pay temporary-total-disability benefits, but it reversed the findings and award of a thirty-six-percent penalty associated with the payment or acceptance of liability for the expenses associated with the recommended surgical treatment of Taylor's compensable lumbar injury. Appellants now bring this limited appeal, arguing that the Commission erred in assessing a twenty-percent penalty against them for failure to pay the two separate periods of temporary-total-disability benefits pursuant to the previous award by the Commission.

The standard of review in workers' compensation cases is well settled. We view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm the decision if it is supported by substantial evidence. *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Air Compressor Equip. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *Geo Specialty, supra*.

Arkansas Code Annotated section 11-9-802(c) (Repl. 2002) provides:

(c) If any installment payable under the terms of an award is not paid within fifteen (15) days after it becomes due, there shall be added to such unpaid installment an amount equal to twenty percent (20%) thereof, which shall be paid at the same time as, but in addition to, the installment unless review of the compensation order making the award is had as provided in §§ 11-9-711 and 11-9-712.¹

In this case, it is undisputed that appellants failed to pay the first period of temporary-total-disability benefits, from March 27, 2003, to December 7, 2004, within fifteen days after it became due. The payment was due on December 22, 2004, and appellants did not pay those benefits until December 30, 2004, some eight days past the due date. On appeal, appellants contend that there is an implied reasonableness standard that must be followed in determining whether penalties are assessed pursuant to Arkansas Code Annotated section 11-9-802(c). In support of this argument, appellants cite *Arkansas Electric Cooperative v. Arkansas-Missouri Power Company*, 221 Ark. 638, 645, 255 S.W.2d 674, 678 (1953), authored by Associate Justice George Rose Smith, for the proposition that “liberal construction comes into play when the statute is silent upon a particular point or when the legislative intent is not easily ascertainable.” However, the following sentences in Justice Smith’s opinion are equally relevant:

Here there is neither silence nor uncertainty. Those to whom a cooperative may sell its wares are described in language too specific to be misunderstood. We are not authorized to press liberality of construction to the point of actually amending the statute.

Id.

¹ None of the parties argue that §§ 11-9-711 and 11-9-712 are applicable in the present case.

Arkansas Code Annotated sections 11-9-704(c)(3) and (4) (Repl. 2002), now require administrative law judges, the Commission, and any reviewing courts to strictly construe the provisions of the workers' compensation statutes, and to weigh evidence impartially and without giving benefit of the doubt to any party. Furthermore, the plain reading of Arkansas Code Annotated section 11-9-802(c) specifically sets forth the deadlines for payment of benefits payable under the terms of an award — fifteen days. Just as in *Arkansas Electric Cooperative, supra*, this language is too specific to be misunderstood. This specific time frame leaves no room for the “reasonableness standard” advocated by appellants. Further, had the legislature intended to allow a “reasonable amount” of time to pay the benefits prior to the penalties becoming applicable, it would not have inserted a specific number of days in which to pay the benefits before penalties attached for failure to pay. Since the statute is not silent on the time frame in which to pay the benefits, but rather specifically mandates payment within fifteen days, and because appellants paid the benefits eight days outside the fifteen-day time frame, we hold that there is sufficient evidence to support the Commission's imposition of the twenty-percent penalty for failure to pay the first period of temporary-total-disability benefits from March 27, 2003, to December 7, 2004.

Appellants also contend that the Commission erroneously imposed the twenty-percent penalty on temporary-total-disability benefits due after March 25, 2005. After the mandate issued from this court, appellants paid Taylor temporary-total-disability benefits until March 25, 2005, at which time they discontinued such benefits. Appellants again

argue that there should be a reasonableness standard applied to determine whether the twenty-percent penalty should attach. For support, appellants point out that after this court affirmed Taylor's award from the ALJ's March 2003 opinion, Dr. Chakales refused to schedule surgery for Taylor and instead took projections of Taylor's spine and recommended an MRI and EMG/NCV. Taylor testified that when she returned to Dr. Chakales, he wanted to reevaluate her condition and did not schedule surgery. In a letter dated January 3, 2005, Dr. Chakales stated that while his diagnoses remained unchanged, he recommended obtaining a current MRI and EMG/NCV of Taylor's back and both legs.

As earlier stated, section 11-9-802(c) specifically provides that benefits pursuant to an award be paid within fifteen days of becoming due. Here, appellants unilaterally decided not to pay benefits after March 25, 2005, because Dr. Chakales did not immediately perform surgery; however, the decision not to immediately perform surgery did not change the fact that Taylor had earlier been determined to be temporarily totally disabled until a date yet to be determined. Therefore, appellants had no authority to withhold payment of those disability benefits because Dr. Chakales did not immediately perform surgery. Given these facts, there is substantial evidence to also support the Commission's award of the twenty-percent penalty on the temporary-total-disability benefits from March 25, 2005, through at least the date that those installments are made current.

Affirmed.

MARSHALL and BAKER, JJ., agree.